

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JAN 28 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
)  
Reexamination of the Comparative ) MM Docket No. 95-31  
Standards for Noncommercial )  
Educational Applicants )

To: The Commission

COMMENTS OF THE MOODY BIBLE INSTITUTE OF CHICAGO

The Moody Bible Institute of Chicago (hereafter "MBI"), by its undersigned counsel and pursuant to the Commission's FURTHER NOTICE OF PROPOSED RULE MAKING (hereafter the "Notice"), FCC 98-269<sup>1</sup>, in the above captioned proceeding, hereby respectfully submits these comments on the proposed standards for deciding among competing applicants for noncommercial, educational ("NCE") broadcast stations.<sup>2</sup>

I. BACKGROUND.

1. MBI is a non-profit, educational institution located in Chicago, Illinois. MBI has been recognized by the United States Department of the Treasury as tax exempt under Section 501(c)(3) of the Internal Revenue Code, and has been

<sup>1</sup> Released October 21, 1998.

<sup>2</sup> The deadline for filing comments was extended to January 28, 1999, pursuant to the Commission's Order in MM Docket No. 95-31, released on December 3, 1998, DA 98-2489.

determined by the Commission to be legally qualified to operate broadcast stations on the channels in the portion of the FM band reserved exclusively for educational broadcasting. MBI is the Commission licensee of noncommercial educational broadcast stations operating on AM frequencies and both reserved-band NCE and non-reserved FM channels.<sup>3</sup> MBI is the licensee of non-commercial FM translator stations operating on reserved and non-reserved FM channels.<sup>4</sup> MBI is a competing applicant for noncommercial, educational FM stations proposing the use of frequencies in the reserved portion of the FM band and is the sole noncommercial, educational applicant

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WMBI(AM&FM)	Chicago, Illinois	WCRF(FM)	Cleveland, Ohio
WDLM(AM&FM)	East Moline, Illinois	WAFS(AM)	Atlanta, Georgia
WMBW(FM)	Chattanooga, Tennessee	WJCG(FM)	Monee, Illinois
KMBI(AM&FM)	Spokane, Washington	WRMB(FM)	Boynton Beach, Florida
WMBV(FM)	Dixon's Mills, Alabama	WGNB(FM)	Zeeland, Michigan
WJSO(FM)	Pikeville, Kentucky	WMKW(FM)	Crossville, Tennessee
WVMS(FM)	Sandusky, Ohio	WMBU(FM)	Forest, Mississippi
WFCM-FM	Murfreesboro, Tennessee	KSPL(FM)	Kalispell, Montana
WVMN(FM)	New Castle, Pennsylvania	KMBY(FM)	Keokuk, Iowa
KMLW(FM)	Moses Lake, Washington	WKES(FM)	Lakeland, Florida
WFCM(AM)	Smyrna, Tennessee	WIWC(FM)	Kokomo, Indiana
WHPL(FM)	West Lafayette, Indiana	WGNR(AM & FM),	Anderson, Indiana
WSOR(AM)	Naples, Florida	961108MA	Mitchell, Indiana
WBID	Wilmington, North Carolina		

<sup>4</sup> K213BQ	Nash, North Dakota	K204CE	Clifton, Arizona
W219AZ	Gallipolis, Ohio	W212AD	Okeechobee, Florida
K204CA	Tahlequah, Oklahoma	W263AH	Fort Pierce, Florida
K214BH	Gettysburg, South Dakota	K272BF	Cavalier, North Dakota
K220EO	Hilo, Hawaii	K212BH	Pierre, South Dakota
W211AQ	Freeport, Illinois	W218AM	Dyersburg, Tennessee
K216CI	Jackson, Wyoming	W210AV	Mitchell, Indiana
W220AY	Brattleboro, Vermont	W209AU	Galena, Illinois
W214AP	Johnson City, Tennessee	W202AV	White Hall, Illinois
K209BD	Las Cruces, New Mexico	K219AZ	Hope, Arkansas
K213CL	Huron, South Dakota		

among a group of competing applications for the use of a non-reserved FM channel.<sup>5</sup> Thus, MBI is an interested party in the subject rule making proceeding. It is also experienced and knowledgeable in all aspects of the resolution of situations involving competing applications for reserved-band educational FM channels and non-reserved FM channels with a mix of commercial and educational applicants. MBI hopes that its experience over the past 60 years as a noncommercial, educational broadcast licensee will assist the Commission in its deliberations on proposed changes in the process utilized in selecting among competing applicants for noncommercial, educational broadcast stations, on reserved and non-reserved channels.

## II. DISCUSSION

### A. PROCEDURES ON RESERVED NCE SPECTRUM.

#### Comparative Hearings.

3. MBI agrees with the initial conclusions of the Commission on the lack of merit in continuing the use of the traditional comparative hearing process in deciding among competing applicants for NCE frequencies. The comparative hearing process is unduly expensive and time consuming. It requires the use of a great deal of the Commission's resources and typically results in a "time sharing" arrangement between the competing applicants that is not realistic, or generally acceptable to the applicants.

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<sup>5</sup> Crown Point, Indiana (BPED-900809MB), Prichard, Alabama (BPED-950524MI), Las Cruces, New Mexico (BPED-960626MD), Tuscaloosa, Alabama (BPED-960819MC), Sebring, Florida (BPED-960820MB), Wenatchee, Washington, (BPED-960930MA), Millersburg, Ohio (BPED-970326MC), Bessemer, Alabama (BPED-970424MA), Selma, Alabama (BPED-970630MA) Missoula, Montana (BPED-970716MA), Ashtabula, Ohio (BPED-970723MA) and Meadville, Pennsylvania (BPED-970801MG).

There would seem to be no reason to continue the use of the hearing process when there are better alternatives available to the Commission based on recent Congressional legislative enactments.

The use of Lotteries.

4. The Balanced Budget Act of 1997 merely affirmed the authority of the Commission to use lotteries in resolving conflicts among mutually exclusive applications for NCE spectrum. However, Section 309 of the Balanced Budget Act does not require, or even express a Congressional preference for, the use of random selection methods by the Commission in determining among competing applicants for NCE facilities. Lotteries have the potential for implementing an expeditious, relatively inexpensive decision-making process. However, any lottery is merely a method of random selection resulting in a NCE applicant "winner" based solely on the principals of chance, while excluding consideration of the relative merits of the various competing applications. Such a random chance process does not allow the Commission to make a reasoned decision from among competing NCE applicants based on the relative merits of their competing applications, as is mandated by Congress under the public interest standards of Sections 309(a) and 307(b) of the Act. The Commission has determined in the past in connection with lottery proposals for full-service broadcast stations that any potential gains in efficiency that may be realized by the use of random selection are significantly outweighed by the high probability that there will be a corresponding

decrease in the quality of broadcast licensees chosen thereunder.<sup>6</sup> Such a qualitative decrease in NCE licensee performance will ultimately manifest in diminished NCE broadcast service quality to the American public. MBI believes that the American people deserve a better process for determining who is best qualified to utilize the scarce NCE broadcast spectrum than by pulling the winner among competing applicants "out of a hat."

5. The Notice attempts to address this obvious short-coming with various suggestions for "weighing" lotteries by preferences based on merit enhancements that can be claimed by applicants in order to increase their statistical chances of selection. While these enhancements may render a lottery somewhat less arbitrary, in reality any process involving a determination based on any form of random selection will always be arbitrary and capricious, and subject to the continued selection of less qualified NCE applicants. MBI does not believe that letter and spirit of the public interest mandate of the Act can be adequately addressed, much less satisfied, through a decision-making process that is as heavily weighted by randomness as it is by NCE applicant merit.

NCE Point System Based On Applicant Characteristics.

6. The Commission's point system proposal for NCE comparative decision-making has the benefits of being more subjective, is inexpensive to utilize by both the Commission and the applicants, and is sufficiently flexible to allow for a relatively prompt resolution from among competing and diverse NCE applicant groups.

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<sup>6</sup> *Random Selection of Broadcast Applicants*, 67 RR 2d 644 (1990).

Moreover, a point system based on the individual characteristics of each individual applicant and its NCE application proposal contemplates a comparative analysis that results in the "winner" being the applicant proposing the most meritorious use of the rapidly depleting NCE spectrum. MBI believes that such a point system will allow for the selection of the best-qualified NCE applicant, not subject to statistical chance, and in furtherance of the public interest mandate of the Act. However, the Commission must be careful in selecting the various criteria to which it may accord merit points in connection with such a system, or this process becomes as arbitrary and capricious as a lottery.

7. The Commission should recognize that while certain characteristics of an applicant entity may seem on the surface meritorious and deserving of enhancement points or "credits", only those characteristics that are not subject to a voluntary and immediate change or dilution once an application is approved should actually be accorded such credits. The Commission's Notice proposes "minority control credit" for applicants controlled both de jure and de facto by minorities, as well as a "local educational presence credit" for applicants whose boards or principals consist of residents of the proposed community of license. MBI's experience has been that membership on the boards of non-profit corporations and organizations is constantly changing as members voluntarily leave and/or are replaced by others.<sup>7</sup> There is simply

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<sup>7</sup> In recognition of this fact, the Commission has proposed to allow non-profit licensees of NCE stations to avoid having to seek consent for a transfer of control every time the membership of controlling boards changes by more than 50%. See, *Notice of Proposed Rule Making in MM Docket 98-43*, 13 FCC Rcd 11349 (1998).

no certainty that a minority or locally controlled non-profit organization seeking a NCE license will continue to be a minority or locally controlled entity after its NCE application is approved by the Commission. In recent history, the Commission established a well-intentioned policy of giving minority ownership enhancement credits in commercial broadcast comparative hearings to applicants that were "minority controlled". However, what was a minority controlled entity during the FCC hearing phase too often became devoid of minority participation once the adjudicatory process terminated and the grant of the minority-enhanced application became a "final order." Moreover, as the Notice recognizes, the Commission is not required to include minority or local participation as enhancing factors in a NCE point system determination under the Congressional mandate in the Budget Reform Act of 1997.<sup>8</sup> Moody submits that the Commission should not give such a credit in the context of competing NCE applications.

8. The Notice also proposes a "local diversity" credit based on an applicant's NCE station not having proposed contour overlap with the principal community contour of any commonly controlled broadcast stations. This proposal also is subject to "gamesmanship" by NCE applicants. There is merit in attempting to foster NCE broadcast diversity of ownership by enhancing the prospects of applicants proposing to operate a new NCE service to an area, as well as in "penalizing" a NCE applicant

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<sup>8</sup> The Commission has long recognized that minority ownership is not an element that can be considered in a Section 307(b) analysis of whether one applicant should be given a dispositive preference over another based on a more efficient use of the available broadcast spectrum. See, *Valley Broadcasters, Inc.*, 67 RR 2d 937 (1990).

seeking a second NCE station in an area already served its existing NCE station.

However, an experienced NCE licensee with a creative consulting engineer can easily configure a technical proposal in a NCE application to avoid such overlap, and which can later be modified to specify a new coverage pattern that would not have allowed it to qualify for this comparative enhancement.<sup>9</sup>

9. MBI submits that enhancement credits based on characteristics or criteria that are easily modified at a later time are incentives for applicants to submit NCE applications created to gain advantages from such standards for comparative purposes, but without the actual intent of building and operating a station in conformity therewith. The Commission's experience in connection with commercial broadcast hearings has also shown that it lacks the resources to monitor post-grant applicants to ensure that they live up to their pre-grant promises in gaining comparative credits. Rather, such bases for enhancements are disincentives for NCE applicants to deal truthfully and in candor with the Commission. Such ephemeral characteristics should not become the bases for decisional merit "points" that used to choose which NCE applicants will carry out the public interest mandate of the Commission. MBI suggests the Commission consider and adopt the following bases for allotting point credits in connection with a comparative NCE application point system adjudication process.

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<sup>9</sup> Moreover, the Commission has previously found that since noncommercial educational channels are reserved for nonprofit, educational organizations so that such organizations may advance their educational goals and objectives, the ownership of other NCE stations by the applicant is "irrelevant" to a determination of which of two or more mutually exclusive noncommercial applicants would best serve the public interest, convenience and necessity under the Act. *Real Life Educational Foundation of Baton Rouge, Inc.*, 69 RR 2d 1043 (1991).



"FIRST APPLICANT" TO FILE POINT.

10. Section 73.202(b)<sup>10</sup> of the Commission's Rules and Regulations requires the allocation of non-reserved FM channels to specific communities. Once the Commission pursuant to a rule making proceeding makes such an allocation, applications are accepted for the use of those frequencies during a "window" filing period. There is no guarantee that the entity requesting the allocation of the non-reserved channel to the community in the rule making will become the ultimate licensee of a station on that channel. Moreover, the entity is not given any preference to reward it for its vision, creativity, effort and expenditure of resources in finding an available non-reserved channel and having it assigned for use. This shortcoming in the non-reserved broadcast policy should not be duplicated in the NCE forum due to the more limited resources of the non-profit, NCE applicants.

11. NCE FM channels are available for utilization in any community where such a use complies with the technical requirements in Section 73.501<sup>11</sup>, Et. Seq., of the Commission's Rules and Regulations. The NCE application process requires applicants for new NCE-FM stations to undertake an extensive and expensive engineering and legal effort to find frequencies that are available for use in a community that they wish to serve through the operation of a NCE station. Under the Commission's current NCE-FM application processing procedures<sup>12</sup>, once an applicant finds such a NCE channel it

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<sup>10</sup> 47 C.F.R. 73.202(b).

<sup>11</sup> 47 C.F.R. 73.506, Et. Seq.

<sup>12</sup> 47 C.F.R. 73.3573.

prepares and submits the necessary application for a construction permit to operate a NCE-FM station thereon. If the application is deemed acceptable for filing by the Commission's staff, a Public Notice is issued announcing a date on which the application will be available and ready for final processing, unless mutually-exclusive applications are filed on or prior to that date. It is normally the release of these public notices, or "cut-off lists", that trigger the filing of competing applications by the "cut-off date", or the deadline for the filing of mutually exclusive applications. At present, the original applicant receives no credit for its pioneering efforts in finding the NCE channel and preparing the initial application proposing a new NCE-FM station. Rather, these efforts often are rewarded by the filing of mutually exclusive applications by other NCE applicants for the channel utilizing the original applicant's hard work, effort and expenses in finding the suitability of that particular NCE-FM channel. MBI submits that the first applicant, based on the application filing date, in a group of competing applications should be given one point for its pioneering efforts. Such a merit point serves the public interest by encouraging qualified NCE-FM applicants to seek creative ways to utilize available NCE-FM channels, thereby increasing the number and diversity of NCE radio voices provided to the American people.<sup>13</sup>

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<sup>13</sup> The Commission gives such credit in connection with the FM translators. Under section 74.1233(d) of the Commission's Rules and Regulations, conflicts between FM translator applications are

12. The Commission's Notice relates that National Public Radio objects to such a "finder's preference". NPR apparently feels that the implementation of a finder's preference will result in a "land rush" of applications for noncommercial frequencies, which is apparently perceived by NPR as contrary to the public interest.<sup>14</sup> The Commission expresses the opinion that such an outcome "...would be undesirable because it could create an artificial demand to apply for such frequencies prematurely and prevent future upgrades by existing licensees." MBI respectfully disagrees with this opinion. It is inherently not in the "public interest" for the Commission to "warehouse" NCE-FM frequencies for the future use of National Public Radio or any other entity. Nor should the Commission protect the ability of existing NCE-FM broadcasters to upgrade their facilities over the desires of qualified NCE-FM applicant groups seeking authorizations for new NCE-FM voices. The Commission's Notice references nothing in support for the proposition that a pioneer preference, or the allocation of a comparative merit point to the first applicant to file for the use of a NCE channel, is not in the public interest. MBI submits that the Commission should offer appropriate incentives for qualified applicants to utilize available NCE channels, and to provide new NCE-FM service throughout the United States. A pioneer preference point offers such an incentive, and should be adopted by the Commission as part of

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resolved based on three priorities. In the event of a tie, a winner is chosen on a "first-come/first served" basis.

<sup>14</sup> NPR raised a similar objection to Moody's rule making proposal to allow for the operation of satellite-fed, NCE FM translator stations. This "land rush" never materialized after the Commission adopted Moody's proposal in this regard. See, *Report And Order in MM Docket 86-112*, 3 FCC Rcd 2196 (1988).

a point system.

13. In the case of a tie between competing NCE applicants, MBI believes that the pioneer preference point should be the deciding factor. Where there is a tie that does not include an applicant with this point, the deciding factor should be the earliest application filed among the applicants in contention.

PAST NCE BROADCAST RECORD.

14. MBI submits that one point should be credited to any NCE applicant demonstrating a record of NCE broadcast station operation and service to the public for a period of at least ten (10) years prior to the filing date of its application. This credit should only be given to NCE licensees who can demonstrate that their ten year or greater term of NCE broadcast station operation is untainted by fines or forfeitures issued by the Commission in response to violations of the NCE broadcast rules.

15. The Commission has previously recognized that the past broadcasting record of an applicant for a broadcast license is the "most reliable gauge" of the future service that it can be expected to provide.<sup>15</sup> This policy has also been upheld as a valid criterion for judging the merits of an application under the public interest standard in the Act by the federal courts.<sup>16</sup> The recent growth of interest in NCE station operation by non-profit, educational entities has increasingly been characterized by an increase in the violations of the Commission's rules limiting such operations to a "non-

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<sup>15</sup> See, *Wabash Valley Broadcasting Corporation*, 1 RR 2d 573 (1963) and *Policy Statement on Comparative Hearings Involving Regular Renewal Applicants*, 18 RR 2d 1901 (1970).

<sup>16</sup> *Central Florida Enterprises, Inc. v. FCC*, 683 F. 2d 503 (1982).

commercial" basis. See, Letter to Agape Broadcasting Foundation, KNON-FM (DA 98-825), released May 1, 1998 and the cases cited therein. MBI submits that any applicant demonstrating a substantial and untarnished record of NCE broadcast station operation should be accorded one merit point in connection with an application for a new NCE station, both as a reward for its past efforts, and in recognition that such a record is the "most reliable gauge" that it will better serve the public interest.

#### COMPARATIVE COVERAGE.

16. MBI concurs that NCE applicants who will more broadly serve the public should receive one merit point. This point should be given to an applicant whose proposed facility will provide service within its 60 dBu contour to an area that is at least 10% greater than the service area of the other applicants.

#### EDUCATIONAL INSTITUTIONS.

17. MBI supports a one-point credit for educational institutions that are seeking a NCE authorization. This credit should be accorded to an educational institution that demonstrates accreditation by a state, regional, or national educational organization.

#### B. BASIC ELIGIBILITY SHOWING.

18. In 1975, MBI submitted applications to the Commission seeking construction permits for NCE FM stations at East Moline, Illinois and Boynton Beach, Florida.<sup>17</sup> At that time, MBI was the Commission licensee of reserved-band,

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<sup>17</sup> See, FCC files BPED-1845 and BPED-1486.

noncommercial FM station WMBI-FM Chicago, Illinois. However, in spite of its having previously been licensed to operate a NCE-FM station, the Commission scrutinized MBI's qualifications to become the NCE licensee of the East Moline and Boynton Beach stations. Finally, in an *Order* in 1977, the Commission determined that MBI was qualified and granted the two NCE-FM construction permit applications.<sup>18</sup> The scrutiny given by the Commission to NCE applicants has certainly changed since that time.

19. As referenced in the Commission's Notice, there are a wide variety of entities that may be eligible to apply for reserved-band, NCE channels. Such applicants must merely certify to certain basic eligibility requirements contained in the Commission's rules.<sup>19</sup> The Commission's Notice does not propose to change these rules in the context of this rule making proceeding. MBI submits that while basic changes in the eligibility criteria found in the NCE rules are not necessary, the Commission should take steps to better ensure that applicants for NCE spectrum demonstrate that they are qualified to hold such licenses.<sup>20</sup> This goal can be accomplished by the submission of certain documentation with a NCE broadcast station application. MBI supports a requirement that applicants for new NCE stations submit certificates demonstrating they are non-profit entities in good standing in the state in which they propose to operate the NCE station. In addition, NCE applicants should be required to submit determinations from

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<sup>18</sup> See, *Order*, FCC 77-422 (released July 8, 1977).

<sup>19</sup> See, 47 C.F. R. 73.205 and 73.606.

<sup>20</sup> Existing NCE licensees have previously proven their qualification and should be merely required to certify their continued eligibility.

the United States Department of the Treasury, Internal Revenue Service, demonstrating that they have been recognized to be either non-profit corporations, organizations, educational institutions, or foundations exempt from taxation under the Internal Revenue Code. The Commission has recently required the submission of this documentation by a licensee or applicant claiming to be exempt from the payment of regulatory fees.<sup>21</sup> The Commission should be as diligent in ascertaining the qualifications of its NCE applicants to hold licenses as it is in ascertaining the qualifications of NCE applicants and licensees to avoid the payment its regulatory and application processing fees.

#### C. MINIMUM HOLDING PERIOD FOR NCE LICENSES.

20. MBI supports the Commission's proposal for a minimum holding period for NCE licenses awarded on the basis of a point system. Such a policy will discourage speculators in NCE licenses who are pursuing a private business interest rather than attempt to serve the public through the operation of a NCE station. MBI would support a holding period of three to five years. MBI believes, however, that NCE licenses issued pursuant to a point system should be allowed to be donated to another non-profit, educational entity at any time. Such a donation is subject to the prior approval of the Commission, and should only be allowed upon the certification by the parties that no consideration will change hands in connection with the donation. A donation to

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<sup>21</sup> See, 47 C.F.R. 1.1162(c) and the Commission's Public Notice "Verification of Exemption From Regulatory Fees Based on Non-Profit Status", DA 97-2507 (released November 28, 1997).

another non-profit, educational entity does not encourage speculation in NCE licenses and should be recognized as an exception to the holding period policy.

D. NONCOMMERCIAL EDUCATIONAL APPLICANTS ON NON-RESERVED, OR SO-CALLED "COMMERCIAL" FREQUENCIES.

21. The Notice seeks comments and suggestions on the manner in which the Commission can resolve competing applications by both commercial and NCE applicants for non-reserved FM channel allotments. One question raised in the Notice is whether the Commission should disqualify NCE applications from applying for non-reserved FM channel allotments in order to avoid such a "mix" of applicants and due to the restriction by Congress in the Tax Reform Act on the use of auctions to proceedings involving only applications for commercial broadcast stations.

22. As noted previously, neither the Act nor the Commission's rules reserve any portion of the broadcast spectrum exclusively for the use of for-profit, commercial licensees. Accordingly, the Commission lacks statutory authority to preclude NCE applicants from submitting applications to utilize non-reserved FM channels or AM frequencies. Presumably Congress would have implemented such a restriction in connection with the Tax Reform Act of 1997 had the competitive bidding limitation to commercial broadcast applications adopted therein been intended to prompt the Commission to label NCE applications "ineligible" to apply for non-reserved channels. It did not do so. The intent of Congress is therefore clear. The restriction on competitive bidding authority to situations involving only commercial broadcast applicants, without a corresponding restriction on NCE applications applying for non-



reserved channels, was not intended to encourage or authorize the Commission to change its current policy of allowing both commercial and NCE applicants to apply for non-reserved channels. Moreover, there are alternatives for dealing with competing commercial and NCE applications for non-reserved FM channels.

Preference Based on Availability of Alternative Channels.

23. In such cases, MBI submits that the NCE applicants should be given a preference if it can be demonstrated that reserved NCE frequencies are not available that will allow the NCE applicant to serve the community to which the non-reserved channel is assigned with a 70 d/b/u service contour. Where this burden of proof is met, the commercial applications should be dismissed and competing NCE applications should be chosen pursuant to the NCE procedures adopted in this proceeding. However, if it is demonstrated that reserved-band, NCE frequencies are available for use that will allow for coverage over the community of license with a 70 d/B/u contour, the NCE applicants should be allowed to amend their application to specify such frequencies or to face dismissal of their application. The Commission should then hold an auction among the commercial applicants, and decide among the NCE applicants based on the procedures to be implemented in this proceeding. This procedure allows for commercial and NCE use of a non-reserved channel depending on whether there is a NCE alternative. Moreover, such a procedure makes it unnecessary for the Commission to use its resources in undertaking rule-making proceedings to have non-reserved channels allocated for NCE use, as proposed in the Notice.

#### E. SECTION 307(b) CONSIDERATIONS.

24. In the context of this proceeding the Commission must not lose sight of the requirements of Section 307(b) of the Act. That section provides, in pertinent part:

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distributions of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

Where applicants for conflicting NCE channels propose to serve different communities and areas, the Commission is required to determine which of the proposals would best provide a fair, efficient, and equitable distribution of radio service under Section 307(b). If the Commission can make such a determination favoring one community over another "...only applicants specifying the favored community..." are to be accorded comparative consideration of their proposals. *Valley Broadcasters, Inc.*, 67 RR 2d 937 (1990). NCE radio stations are to be considered in any Section 307(b) analysis, and conflicting applications for NCE-FM stations involving different communities of license require, before any comparative analysis based on individual merit or "bonus points", a determination whether one applicant should be granted on the basis of a Section 307(b) preference.

25. The Notice implies in connection with the proposals for comparative consideration of NCE applicants that the Commission's Section 307(b) mandate can be limited to lottery or point system enhancement. *See, Notice* at page 12, paragraph 21(B). This is an erroneous interpretation of the requirements of Section 307(b). Where two or

more NCE-FM applicants file conflicting applications proposing to serve different communities of license, the Commission must first make a determination under Section 307(b) of the Act whether one application should be preferred based on the greater need for the use of the NCE-FM channel in that community. This analysis may result in a pre-emptive determination of a greater need for the service that forestalls any further analysis of the individual merits of other competing applications. Nothing in the language in the Tax Reform Act of 1997 relieves the Commission of this preliminary Section 307(b) obligation.

WHEREFORE, The Moody Bible Institute of Chicago respectfully submits these comments to assist the Commission in formulating a legal and equitable basis for choosing among competing NCE applications.

Respectfully submitted,

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